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No. 90-103

In The

Supreme Court of the United States

October Term, 1990

PENNHURST STATE SCHOOL
& HOSPITAL, *et al.*,

Petitioners,

vs.

TERRI LEE HALDERMAN, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Where the parties agreed and the District Court ordered that certain provisions of a settlement agreement would remain in effect permanently, and the defendants had not yet complied with the agreement, did the District Court properly interpret a provision for future cessation of "active jurisdiction" to permit enforcement of the agreement prior to such cessation?

2. Does the District Court have continuing jurisdiction to enforce a settlement agreement which it approved and adopted as a consent decree in a case that is still properly before it?

3. Where the factual findings of noncompliance below are unchallenged, did the District Court properly apply the compliance standard in the settlement agreement?

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STATEMENT OF THE CASE

Three sets of defendants were found to have violated a settlement agreement. Only one set has petitioned this Court for a writ of *certiorari*. It is questionable whether this defendant has standing to raise all the questions in its petition; however, we will not brief the standing issues at this time. The sixteen year procedural and factual history of this case, which is virtually at a successful and amicable end, is outlined below.

This civil rights class action was filed on May 30, 1974. After a two month trial, the District Court issued its decision on December 23, 1977. The defendants were found liable for extensive violations of plaintiffs' rights. 446 F.Supp. 1295 (E.D.Pa. 1977). Appeals were heard by the Third Circuit and this Court. This Court reversed and remanded the case for resolution of the constitutional issues. *See Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981); *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984); *Halderman, v. Pennhurst State School and Hospital*, 612 F.2d 84 (3d Cir. 1979); *Pennhurst State School and Hospital v. Halderman*, 673 F.2d 647 (3d Cir. 1982).

After remand, the parties entered into a settlement agreement in 1984, negotiated with the assistance of a Third Circuit judge assigned for that purpose. The District Court approved and adopted the settlement as a consent decree in 1985. The history through the approval of the agreement is summarized at 610 F.Supp. 1221 (E.D. Pa. 1985).

This litigation arose because the residents of the Pennhurst State School and Hospital for people with mental

retardation were suffering abuse, neglect and injuries as a result of inadequate, inappropriate or unnecessary treatment. The Commonwealth and County Defendants were found to have deprived the Plaintiffs of the required treatment. The settlement agreement required the establishment of a network of community services and placements for Pennhurst residents for whom such placement was determined necessary by an individual planning process and treatment program controlled by all the defendants.

After the approval of the parties' settlement agreement, the District Court was (and still is) actively involved with the parties and the enforcement of the consent decree, as such involvement was provided for in the decree itself. The recent series of appeals began on March 24, 1989. On this day, the Plaintiff-Intervenor, Pennsylvania Association for Retarded Citizens (ARC/PA), joined by the Halderman plaintiffs, filed motions "for enforcement, further orders, and extension of the Final Settlement Agreement" against the Petitioners and other defendants.

There were four days of hearings on these motions which began on June 21, 1989 and concluded on July 6, 1989. The Petitioners here, the Commonwealth Defendants, were offered the opportunity to begin presenting their case on June 29, 1989 after the Plaintiffs rested. The Petitioners chose not to proceed. Instead, on July 6, 1989, the last day of the hearing, they raised the jurisdictional question which is argued here, claiming that the court's jurisdiction over them evaporated on July 1, 1989; yet, on June 29, 1989 they had refused to begin their case.

The District Court filed its opinion on August 28, 1989. It held that Petitioners were in substantial non-compliance with the decree, granted them six months to achieve compliance, and extended the effective date of certain provisions of the decree in light of the extension of time for compliance.

The Third Circuit Court of Appeals, on April 17, 1990, held that "the district court had jurisdiction to enforce violations of its orders in Appendix A." Additionally, there were "no errors in the district court's determination that the Commonwealth, Montgomery County and Delaware County are all in substantial noncompliance with the terms of Appendix A." Petition, Third Cir. Op. at 30.

The Commonwealth Defendants filed this petition for a writ of *certiorari* on July 16, 1990.

REASONS FOR DENYING THE WRIT

I. The Court Below Properly Interpreted "Active Jurisdiction" to Refer to Its Ability to Enforce the Consent Decree

The issue of a court's routine exercise of jurisdiction is not worthy of review on *certiorari* because of its ordinariness. The scope of the issue is of momentary significance for only the parties in this particular lawsuit. The words chosen by parties in a settlement agreement are unique to that agreement and their interpretation for purposes of enforcement will not have any far-reaching effects. This is a sixteen year old case, which was about to conclude, in which the court has been and is presently actively

involved solely to ensure that the Petitioners complete the final few actions which they consented to take.

The parties provided in ¶14 and ¶16 of the consent decree that the court would no longer have *active* jurisdiction of this case against the Commonwealth as of July 1, 1989 (extended in 1987 to 1990), provided that all defendants were in compliance with the decree. The case has yet to reach the stage of completion at which this provision could take effect.

It is obvious that on July 1, 1989 it could not be said with certainty that all parties were in compliance with the agreement. Hearings on the plaintiffs' motion to enforce the agreement were still in progress and therefore ¶14 and ¶16 of the consent decree were not yet operative. When and if they had taken effect, the date on which the Commonwealth would no longer be under the court's jurisdiction would be much later than July 1, 1989, because the defendants were granted an extension of time to comply with the agreement. This extension moved all the critical dates in the consent decree ahead, including the day on which active jurisdiction would cease.

The parties intended the provisions of Appendix A, which contains the specific minimal obligations of the Commonwealth and the Counties, to remain in effect permanently. They also knew that this agreement was more than just a private contract between the parties; it was adopted and approved by the court as a consent decree. This decree and its provisions would serve no purpose if the court's power to assert jurisdiction and enforce the agreement did not last as long as the orders in Appendix A were to be effective. The parties would not

give up their chance to continue litigating if they did not believe that a settlement agreement would effectively and permanently resolve their conflict.

The Third Circuit was mindful of the intentions of the parties at the time that the settlement agreement was written. By carefully giving meaning to all of the words and phrases in the agreement and interpreting them in a way that "normal speakers of English under these circumstances" would, that court concluded that "the fact that the parties chose to qualify the word 'jurisdiction' suggests an attempt to contrast active jurisdiction with some other kind of jurisdiction, rather than no jurisdiction at all." Petition, Third Cir. Op. at 19. Normal speakers of English "would use the term to mean that after the dates specified in ¶14 the district court would cease 'hands on' control over the matter and simply resort to the usual continuing jurisdiction that courts routinely exercise over their injunctions." *Id.*

Parties to a lawsuit, having voluntarily entered into settlement, cannot later apply a very crafty interpretation of that agreement to achieve an effect not contemplated or made known at the time that the agreement was reached. This consent decree is clear in its provisions; jurisdiction exists and will continue to exist even when ¶14 and ¶16 of the consent decree become effective. Interpretation of the terms in the parties' agreement is not even necessary. This case has not been dismissed, litigation is ongoing, no final determination has been made as to whether or not Commonwealth Defendants have complied with the consent decree.

II. District Courts Have Jurisdiction to Enforce Settlement Agreements Which Were Approved and Adopted in Cases Still Properly Before Them

Contrary to Petitioners' claim, the circuits are not split on the jurisdictional question fundamental to the decision below, a decision which is incorrectly characterized by Petitioners. In any event, the issue was not decided by the Third Circuit, as Petitioners concede. Petition at 13, n. 4. The question is whether, in the ongoing *Pennhurst* litigation which has seen constant judicial activity since the settlement agreement was approved, the District Court has jurisdiction to continue to enforce a settlement agreement, approved and adopted by the court, which was to terminate litigation pending before it by a date in 1990.

The circuits agree that district courts can enforce agreements in this situation.[1] "Probably the least controversial assertion of federal jurisdiction over civil rights settlements involves those settlement agreements executed pending litigation but before dismissal of the suit." (footnote omitted) * * * " . . . the judicial consensus is that federal courts can resolve predismissal settlement disputes, ... " Solimine, *Enforcement and Interpretation of Settlements of Federal Civil Rights Actions*, 19 Rutgers L.J.

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[1] *Eg., Kent v. Baker*, 815 F.2d 1395 (11th Cir. 1987); *Suburban O'Hare Commission v. Dole*, 787 F.2d 186 (7th Cir. 1986); *Allen v. Alabama State Board of Education*, 612 F.Supp. 1046 (D.C. Ala. 1985); *In Re Corrugated Container Antitrust Litigation*, 752 F.2d 137 (5th Cir. 1985); *Aro Corporation v. Allied Witan Company*, 531 F.2d 1368 (6th Cir. 1976).

295, 300 (1988). It is no wonder that the Third Circuit did not discuss such a clear and obvious issue.

The circuits are split on an issue ***not raised here:*** whether federal district courts have inherent jurisdiction over *dismissed matters* once properly before them, regardless of the intent of the parties or the court. This Court, however, will not have an opportunity to resolve this conflict if *certiorari* is granted because the question is not presented by the case at bar. The conflict-creating cases cited by the Petitioner involved questions neither relevant to nor raised by the Third Circuit decision.[2]

The cases cited by Petitioners not only decided issues not raised or presented by the Third Circuit judgment, but they confirm the correctness of the decision below. The circuits concur that retaining jurisdiction over a case which has not been dismissed in order to enforce a settlement agreement is a settled principle and not an issue which requires resolution. *Fairfax Countywide Citizens v. Fairfax County*, 571 F.2d 1299, 1303 (4th Cir.1978) (court has enforcement power if "agreement had been approved and incorporated into an order of the court."); *McCall-Bey v. Franzen*, 777 F.2d 1178, 1188 (7th Cir. 1985) ("no doubt of the power of a district judge to dismiss a lawsuit

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[2] *McCall-Bey v. Franzen*, 777 F.2d 1178 (7th Cir. 1985) (court entered an order of dismissal before violation of settlement agreement occurred); *Fairfax Countywide Citizens Assn. v. County of Fairfax*, 571 F.2d 1299 (4th Cir. 1978) (settlement agreement was not adopted by the court and case was dismissed); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir. 1976) (case was dismissed pursuant to settlement); *Lodono v. City of Gainesville*, 768 F.2d 1223 (11th Cir. 1985) (controversy as to whether or not a settlement agreement existed).

conditionally, retaining jurisdiction to effectuate terms of settlement agreed to by the parties."); *Kent v. Baker*, 815 F.2d 1395, 1399-1400 (11 Cir.1987) ("Better reasoned weight of authority which holds that a district court has jurisdiction to enforce a settlement agreement, at least when one party refuses to abide by the agreement prior to dismissal of the action.").

The issue the Petitioners have manufactured is one over which the circuits are in conflict; however, it was not decided by the court below and it is not the issue before this Court now.

III. The Factual Findings of Non-Compliance Below Should Not Be Disturbed

The parties to the settlement agreed to a standard of "*substantial* compliance," a generous standard which recognizes varying degrees of compliance. Satisfaction of the consent decree would not force the Petitioners to achieve perfection; yet it would fulfill constitutional requirements. The court below found that the Petitioners fell far short of fulfilling their obligations.

The settlement agreement specifies that individualized treatment and habilitation programs must be established for each resident leaving Pennhurst; one "cookie-cutter" treatment program for all of the residents is insufficient and unconstitutional. This court required such a case-by-case analysis of treatment needs in *Youngberg v. Romeo*, 457 U.S. 307 (1982).

The Third Circuit did not establish an impossible or even difficult standard. It stated that "what is at issue in this

appeal is not the definition of how many individuals can be housed in a facility . . . , but whether the class members are *all* receiving the individual attention and planning that they have a right to under the agreement." Petition, Third Cir. Op. at 25 (emphasis added). The Third Circuit did not attempt to impose actual treatment and habilitation alternatives on the defendants.

The class members are not all receiving this required treatment. Petitioners agree; they have never asserted that this fact, or any other factual conclusions below, are clearly erroneous under Rule 52(a) of the F.R.Civ.P. Because the compliance issue raised by Petitioners is based on uncontested factual findings, it would be inappropriate for this Court to review the District Court's admittedly accurate findings. The familiar legal standard of "substantial compliance" was correctly applied.

CONCLUSION

Because the factual findings have gone unchallenged, there is no inter-circuit conflict on the issues presented, and because these issues have no impact on anyone other than the parties in this case, certiorari should be denied.

Respectfully submitted,

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